contract for the sale of land, the vendee sued for a rescission on the ground of fraud, and in the same action sued to recover the money paid and to establish and foreclose a lien on the land therefor. *Held*, that though the plaintiff is entitled to a rescission and the return of the money, the lien is lost by the rescission. *Davis* v. *Rosenzweig Realty Co.*, 192 N. Y. 128.

A vendee is generally allowed an equitable lien for money paid under an executory contract for the purchase of land. *Elterman* v. *Hyman*, 192 N. Y. 113; see 9 HARV. L. REV. 486. This lien is based, not on the contract, but, as in the case of a vendor's lien after conveyance, on the necessity of doing justice as between vendor and purchaser in the relation created by the contract. *Whitbread & Co., Ltd.* v. *Watt*, [1902] 1 Ch. 835. And since the lien affords to the vendee security for the purchase money paid before conveyance, the analogy to an equitable mortgagee's lien is very close. *Rose* v. *Watson*, 10 H. L. Cas. 672. The mere fact of rescission clearly does not destroy the equitable basis of this vendee's lien. Accordingly, the English and some American courts have definitely held that such a lien survives rescission. *Whitbread & Co., Ltd.* v. *Watt*, *supra*; *Galbraith* v. *Reeves*, 82 Tex. 357. Furthermore, as the very fact of suing to foreclose the lien would seem to constitute an election to rescind the contract, the many American courts which allow such suits after the vendor has failed to make a good title, apparently accept that doctrine. *Occidental Realty Co.*, v. *Palmer*, 117 N. Y. App. Div. 505. The present case would therefore, both on principle and authority, seem unsound.

WAGERING CONTRACTS — RECOVERY OF MONEY LENT FOR GAMBLING. — The plaintiff lent money to the defendant's testator knowing that it might be used in gambling. The money was lent and so used in a jurisdiction where gambling was not illegal. *Held*, that the plaintiff may recover. *Saxby* v. *Fulton*, 24 T. L. R. 856 (Eng., K. B. D., July 27, 1908).

The English courts hold that the fact that money is lent for the express purpose of gambling will not defeat recovery if the contract is made and the money so used in a jurisdiction where gambling is not illegal. *Quarrier* v. *Colston*, 1 Phil. 147. The weight of American authority follows this doctrine. *Ward* v. *Vosburgh*, 31 Fed. 12. Opposing jurisdictions maintain that comity does not require a state to enforce contracts conflicting with its own conception of public policy. *Pope* v. *Hanke*, 155 Ill. 617. Conceding the soundness of the minority doctrine, the present holding would still seem correct, for the case must be distinguished from one wherein the loan is for the express purpose of gambling in a state where that practice is illegal. Money so lent cannot be recovered. *McKinnell* v. *Robinson*, 3 M. & W. 434; *Tyler* v. *Carlisle*, 79 Me. 210. But where the money is placed at the absolute disposal of the borrower, as in the principal case, the mere knowledge of the lender of the other's intention to use it in illegal gaming does not so render him *particeps criminis* as to defeat recovery. *Jackson* v. *Bank of Goshen*, 125 Ind. 347.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

EQUITABLE JURISDICTION OF NUISANCE. — In most of the United States it has been held that upon a bill to abate a nuisance, when the plaintiff's right or the defendant's wrong is disputed and doubtful, a permanent injunction will not issue unless the plaintiff has first obtained a judgment at law.[1] Whether or

[1] See 5 Pomeroy Eq. Jur., §§ 519 *et seq.* In England, New York, and California the statutes regulating procedure are construed to have abolished the rule. Roskell *v.* Whitworth, L. R. 5 Ch. 459; Corning *v.* Troy Factory, 40 N. Y. 191; Lux *v.* Haggin, 69 Cal. 255, 284.

not an equity judge to-day would consider himself bound by this rule of alleged expediency,[2] the definitive abolition of it would remove a pitfall from an important field of modern litigation, and is to be desired. Such is the conclusion reached by Professor William Draper Lewis, who has exhaustively set forth in a recent article what he believes to be the only possible, that is, the historical, explanation of the rule. *Injunctions against Nuisances and the Rule Requiring the Plaintiff to Establish His Right at Law*, 56 U. P. L. Rev. 290 (May, 1908). No explanation lies in the necessity of jury trial, inasmuch as equity decides difficult questions of fact in other kinds of injunction cases, as waste, unfair trade competition, trespass and interruption of easement when title is not disputed, and others; moreover, a feigned issue at law, or the statutory equivalent, may always be directed. Professor Lewis fastens the responsibility for the rule chiefly upon Lord Eldon,[3] who stood at the end of a century in which the doctrine that no question of title to land could be tried except at law had become fixed.[4] This prohibition extended to injunctions in support of easements, since these if allowed would usually decide the title to the land or the existence and extent of the title to the easement. On the other hand, no difficulty was felt in entertaining a bill to enjoin waste, because in such a case no question of title would probably be in issue. The mistake which the writer ascribes to Lord Eldon was that he classed bills to abate nuisance, which involve no question of title, with cases on easements instead of with those on waste. The confusion of nuisance with interruption of easement may be traced to the common law assize of nuisance, which lay for either tort, and to the consequent confused nomenclature. The rule, then, not only is useless in modern practice, but grew out of an ancient error of principle.

Some doubt, however, may be cast on the writer's contention that Lord Eldon erred when he applied the same rule of procedure to nuisances as to interruption of easements. Professor Lewis defines nuisance to be the interruption of the plaintiff's use of his property, not involving a trespass, and not actionable unless actually damaging; whereas interruption of easement involves interruption of possession, and is actionable without present damage: in the former class he would put the violation of a landowner's right to pure air, in the latter the violation of a riparian owner's right to pure water. But it does not appear that questions of title would more likely be raised by a bill to enjoin pollution of water than by one to protect air. Again, although the writer admits that the point is open, he indicates his view that a prescriptive right to commit a nuisance[5] ought not to be countenanced. It is submitted, however, that if the contrary view should be taken, many suits to abate nuisance would present questions of title similar to those presented in the case of an easement claimed by prescription. Finally, at this date certainly the same practical considerations which move the writer to deprecate the rule as to nuisances should apply to the analogous rules governing trespass and easement cases where title is disputed; for the modern landowner probably values the mere title to his land no higher than his right to restrain interference with the enjoyment of it — he needs a common law action no more to protect the one than the other.

THE ADMINISTRATION OF INTERNATIONAL LAW BY STATE COURTS. — As international law comes to be more generally recognized as a complete, though perhaps not yet well defined, system of law, the question naturally presents itself as to how far the citizens of a state, as individual members of society, are to be bound by its precepts. Our courts have frequently decided that when it becomes necessary in the adjudication of a case they will take judicial cognizance of and apply the accepted principles which govern the family of nations.[1]

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[2] See Ames, Cas. Eq. Jur. 560 *n.*
[3] Crowder *v.* Tinkler, 19 Ves. 617.
[4] Pillsworth *v.* Hopton, 6 Ves. 51.
[5] See 2 Wood on Nuisance, Ch. 20.

[1] Moultrie *v.* Hunt, 23 N. Y. 394, 396.